Supreme Court, U.S.
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NO._____

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1993

STATE OF ALABAMA,

PETITIONER,

V.

DANIEL MCREYNOLDS,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT AND
COURT OF CRIMINAL APPEALS OF ALABAMA

PETITION OF THE STATE OF ALABAMA

OF

JAMES H. EVANS
ATTORNEY GENERAL

AND

STEPHEN N. DODD*
ASSISTANT ATTORNEY GENERAL

ATTORNEYS FOR PETITIONER

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*Counsel Record

30 pp

QUESTION PRESENTED

Where a police officer on one day receives a "tip" from a known, confidential informant to the effect that a suspect -- who is also known the officer -- has just received a shipment of drugs, and on the following day the officer receives a second "tip" from the same informant to the effect that the suspect in question is at that moment out on the streets making deliveries of the drugs which had been received the previous day, and where, shortly thereafter, in the context of attempting to corroborate these tips: first, the police officer observes the suspect parked in his car on a street \corner engaged with a pedestrian in what could reasonably be interpreted by the officer as a "suspicious" activity; and, second, the police officer observes the suspect and the pedestrian next engaged in what could reasonably be interpreted as a "furtive" movement once the suspect and the

pedestrian realized they were being watched -- was the police officer possessed at that point in time of sufficient "reasonable suspicion" under the totality of the circumstances so as to effect a "Terry"-type investigative stop of the suspect's automobile?

THE PARTIES

In the Circuit Court of Dallas County, Alabama, the Alabama Criminal Appeals and the Supreme Court, the parties were Daniel McReynolds, who is Respondent herein, as Defendant, Appellee, and Respondent, respectively, and the State of Alabama, who is Petitioner herein, as Plaintiff, Appellant, and Petitioner, respectively.

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NO._____

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STATE OF ALABAMA,

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PETITION OF THE STATE OF ALABAMA

The State of Alabama, Your Petitioner, respectfully prays that a writ of certiorari issue to review the opinions and orders of the Supreme Court and Court of Criminal Appeals of the State of Alabama in the above cause.

OPINIONS AND ORDERS BELOW

The Order of the Circuit Court of Dallas County, Alabama, overruling Respondent McReynolds' motion to suppress certain physical

evidence introduced against him at his trial is not reported and was not issued in written form. An excerpt from the record of Respondent McReynold's trial which contains a transcript of the hearing on Respondent's motion to suppress and the trial court's ruling on that motion is submitted as Appendix "A" to this petition.

The opinion and order of the Court of Criminal Appeals of Alabama reversing and remanding the Dallas County Circuit Court's order is reported as follows:

> State v. McReynolds, [Ms. CR 92-725 (August 13, 1993), ___ So.2d ___ (Ala. Cr. App. 1993)]

A copy of this opinion is submitted as Appendix "B" hereto.

The order of the Supreme Court of Alabama denying the writ of certiorari sought by the State of Alabama to review the above opinion and order is reported with the above opinion. A copy of the same is submitted as Appendix "C" hereto.

JURISDICTION

The order of the Supreme Court denying review was issued on December 30, 1993, and this petition is filed within ninety (90) days of said date. This Honorable Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

The Alabama Courts believed their decisions were mandated by the prohibition against unreasonable searches and seizures of the Fourth Amendment to the United States Constitution and Section 1 of the Fourteenth Amendment to the Constitution of the United States. Said constitutional provisions read:

AMENDMENT IV

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

AMENDMENT XIV

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of the law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATUTORY PROVISIONS INVOLVED

The Respondent is indicted under Code of Alabama 1975, §§13A-12-212(a)(1) and 13A-12-213(a)(2), copies of the same being submitted here in Appendix "D." The validity of these statutes is not at issue here.

STATEMENT OF THE CASE

This is an appeal by Daniel McReynolds (hereinafter "Respondent McReynolds") from his conviction in Dallas County Circuit Court for one count of possession of controlled substances, and one count of first degree possession of marijuana. On February 13, 1992,

the grand jury of Dallas County, Alabama, indicted Respondent McReynolds on one count of possession of a controlled substance in violation of Code of Alabama 1975, §13A-12-212(a)(1) and one count of first degree possession of marijuana in violation of Code of Alabama 1975, §13A-12-213(a)(2). (CR. 3-4)[1] On March 9, 1992, Respondent McReynolds was formally arraigned and entered pleas of not guilty to both counts. (CR. 5)

Prior to trial, Respondent McReynolds filed a Motion to Suppress certain drug evidence obtained by the State incident to an investigatory stop of Respondent's automobile which had occurred on December 21, 1991. (CR. 8-15) A hearing was held on Respondent's Motion to Suppress on July 30, 1992, at which time the motion was overruled. (R. 1; 58-83)

---

[1]References to the trial transcript will be designated "R."; references to the circuit court clerk's record will be designated "CR.".

On July 30, 1992, a jury was struck in the case of State of Alabama vs. Daniel McReynolds, CC 92-126 (Dallas County Circuit Court), and Respondent McReynold's trial commenced. (R. 1; 84) On July 31, 1992, the jury returned its verdict, finding McReynolds guilty of possession of a controlled substance and first degree possession of marijuana as charged in the State's indictment. (R. 224-225)

A sentencing hearing was held on January 28, 1993, at which time Respondent McReynolds was sentenced, pursuant to the Alabama Habitual Felony Offender Act, to fifteen (15) years imprisonment. (R. 240) Respondent McReynolds gave oral notice of appeal at the time of sentencing. (R. 240) An appeal followed.

On August 13, 1993, the Alabama Court of Criminal Appeals reversed and remanded Respondent McReynolds' conviction. In its opinion, the Court of Criminal Appeals concluded that, when viewed under the totality of the circumstances, certain "tips" given to a Selma, Alabama police detective by his confidential

informant lacked sufficient indicia of reliability so as to provide the reasonable suspicion required for the officer to have legally effectuated the Terry-stop of Respondent McReynold's vehicle which, ultimately, produced the drugs for which Respondent was convicted and which had been the subject of his motion to suppress. On August 27, 1993, Petitioner State of Alabama applied for rehearing and moved for the finding of additional facts.

On September 30, 1993, the Alabama Court of Criminal Appeals overruled Petitioner State of Alabama's application for rehearing without opinion.

Petitioner State of Alabama sought review of the Court of Criminal Appeals' decision and opinion by a petition for writ of certiorari in the Alabama Supreme Court raising the points and questions presented herein. However, on December 30, 1993, the Alabama Supreme Court denied review (Appendix "C").

STATEMENT OF THE FACTS

Immediately prior to Respondent McReynolds' trial on charges of possession of a controlled substance and first degree possession of marijuana, a hearing was held on Respondent's motion to suppress certain drug evidence which the State sought to introduce into evidence against him. (R. 58) Among other things, Detective Roger Goodman, a detective with the Selma, Alabama Police Department's Drug Unit, testified at the suppression hearing that on December 20, 1991, he had received a tip from one of his confidential informants to the effect that Respondent McReynolds had that day "received a package of crack cocaine." (R. 59; 61-62) Detective Goodman further testified that he had received tips from this same informant on "several" previous occasions, and that on "each" of these previous occasions the information received from this informant had turned out to be reliable. (R. 62) Detective Goodman further testified that, on the following day, December

21, 1991, he was contacted again by this confidential informant and given information to the effect that Respondent McReynolds was at that time "out making deliveries" of the crack cocaine he had received the previous day. (R. 63)

In response to this information, Detective Goodman stated that he and another detective, Jimmy Ray Martin, proceeded immediately to go out on patrol looking for Respondent McReynolds. (R. 63) In that Respondent McReynolds was known to both officers, they were able to locate him very quickly, finding him parked in his car at the corner of Duke and Small Streets in Selma talking to another individual who was standing beside the driver's side of Respondent's car. (R. 64-65) Detective Goodman testified that, when it appeared that the individual standing next to Respondent McReynolds' car saw Goodman and Martin in their unmarked police cruiser, the individual quickly walked away in one direction, with Respondent McReynolds quickly pulling out and driving off

down Small Street in his car in another direction. (R. 65-66)

On the basis of their informant's tip, plus what Detective Goodman and his partner Jimmy Martin observed taking place there on Small Street between Respondent and the pedestrian standing next to his car, Detective Goodman turned on his blue lights and proceeded to pull Respondent McReynolds' car over. (R. 66-67) Detective Goodman testified that when he walked up to Respondent's driver's side window, he could see a knife laying on the floorboard of the car's front seat. (R. 67) Upon seeing this, Detective Goodman had Respondent get out of his car and began to "pat" Respondent McReynolds down. (R. 67) In the process of this pat-down search of Respondent McReynolds' outer clothing, both a revolver and packages of cocaine and marijuana were discovered. (R. 68; 95; 120)

SUMMARY OF THE ARGUMENT

In Adams v. Williams, 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972), this Court held that an informant's tip which could not be sufficiently verified so as to rise to the level of probable cause could still provide the reasonable suspicion necessary to support an investigatory stop, so long as the tip had been sufficiently verified so as to carry enough "indicia of reliability" to justify the officer's reliance on the tip (emphasis added). Later, in Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), this Court adopted a "totality of the circumstances" approach for determining whether an informant's tip could be sufficiently reliable so as to provide probable cause. Under this "totality of the circumstances" approach, the veracity of the informant, the demonstrated reliability of the informant, and the basis for the informant's knowledge were all relevant factors in determining probable cause. However, under the totality of the circumstances, a deficiency in

the State's proof of either the veracity of the informant, the reliability of the informant, or the basis of the informant's knowledge, could still be compensated for in determining the overall reliability of the tip by a strong showing as to the other factors, or by some other indicia of reliability (emphasis added). See Illinois v. Gates, 462 U.S. at 233, 103 S.Ct. at 2329.

Then, in Alabama v. White, 496 U.S. 325, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990), this Court held that the veracity, reliability and basis of knowledge factors for determining whether an informant's tip created probable cause were also relevant in the reasonable suspicion context, provided that allowances were made in applying them there for the **lesser showing** required to meet the reasonable suspicion standard (bold and emphasis added). See Alabama v. White, 496 U.S. at ___, 110 S.Ct. at 2415. In reversing this case on the grounds that the informant's tips in question had not been sufficiently verified so as to support an

investigatory stop, the Alabama Court of Criminal Appeals ignored this Court's command in Illinois v. Gates, supra, and Alabama v. White, Id., that allowances be made by lower courts in their application of the veracity, reliability and basis of knowledge factors for analyzing and determining the reliability of an informant's tip, so as to give effect to the proper application of the reasonable suspicion standard as what this Court has intended it to be -- a lower standard requiring a lesser showing of an informant's tip's reliability than that required to establish the higher standard of probable cause. In other words, the Alabama Court of Criminal Appeals failed to recognize the distinction here between what is required to establish merely reasonable suspicion, and what is required in order to establish probable cause.

ARGUMENT

In Aguilar v. Texas, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964) and in Spinelli

v. United States, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969), this Court enunciated a two-pronged test for determining whether a tip from an informant could provide the probable cause for a search or an arrest. Under Aguilar and Spinelli, the prosecution had to prove both the informant's veracity or reliability, as well as the basis of the informant's knowledge.

Then, in Adams v. Williams, 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972), this Court held that an informant's tip which could not be sufficiently verified so as to rise to the level of probable cause could still provide the reasonable suspicion necessary to support an investigatory stop, so long as the tip had been sufficiently verified so as to carry enough "indicia of reliability" to justify the officer's reliance on the tip. Later, in Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), the Court abandoned the Aguilar-Spinelli test in favor of a "totality of the circumstances" approach for determining whether an informant's tip could be sufficiently

reliable so as to provide probable cause. Under this "totality of the circumstances" approach, the veracity of the informant, the demonstrated reliability of the informant, and the basis for the informant's knowledge were all still relevant factors in determining probable cause. However, under the totality of the circumstances, a deficiency in the State's proof of either the veracity of the informant, the reliability of the informant, or the basis of the informant's knowledge, could still be compensated for in determining the overall reliability of the tip by a strong showing as to the other factors, or by some other indicia of reliability. See Illinois v. Gates, 462 U.S. at 233, 103 S.Ct. at 2329.

Finally, in Alabama v. White, 496 U.S. 325, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990), this Court held that the veracity, reliability and basis of knowledge factors for determining whether an informant's tip created probable cause were also relevant in the reasonable suspicion context, provided that allowances were

made in applying them there for the lesser showing required to meet the reasonable suspicion standard (emphasis added). See Alabama v. White, 496 U.S. at ___, 110 S.Ct. at 2415. This "allowance-makirg" is what the trial court here correctly did, and is where the Alabama Court of Criminal Appeals made its mistake in holding --

> "In this case, the information from the confidential informant did not "carr{y} enough indicia of reliability to justify the officer's forcible stop" of the appellant. Adams v. Williams, 4076 U.S. 143, 147, 92 S.Ct. 1921, 1924, 32 L.Ed.2d 612 (1972) Here, the deficiency in one factor was not compensated for by a strong showing of the informant's veracity or by some other indicia of reliability. The prosecution only minimally established the informant's credibility. 1 W. LaFave, Search and Seizure §3.3(a)(2d ed. 1987) There was no showing that the information was reliable and there was nothing to show how the informant obtained his information. There simply was no other indicia of reliability.
>
> There was no corroboration by independent police investigation of the information supplied by the informant. The "tip" was extremely general and was almost impossible to corroborate unless the police actually observed the appellant selling drugs, which they did not. The informant did not provide a description of the appellant's

> automobile, the place or place where he would be 'making deliveries,' the time those deliveries would be made, or the people to whom those deliveries would be made. The tip contained no self-verifying detail and was not a statement against the penal interests of the informant.
>
> In this case, there is no indication of the basis of the informant's knowledge; there is no indication of how the informant obtained that knowledge. The prosecution established the informant's 'reliability' or 'veracity' only to a very limited degree. We have little more than a cursory assertion that the informant was reliable. We have no indication of what type of information the informant had previously provided the officer. Indeed, it may have been no more than that provided here.

State v. McReynolds, {Ms. CR 92-725 at p. 6-7 (August 13, 1993) ___ So.2d ___ (Ala. Cr. App. 1993)}

Had the Alabama Court of Criminal Appeals made the "allowances" called for by the reasonable suspicion-investigative stop context in which this issue arose, rather than stridently holding in its opinion to an over-analysis of the various indicia of reliability present (or lacking) in this case as if this case were one where the indicia of reliability present had to be sufficient so as

to support a finding of probable cause to make an warrantless arrest or probable cause to conduct a warrantless search, its conclusion surely would have been different.

In addition to this, some of the assumptions reached by the Alabama Court of Criminal Appeals about these indicia of reliability were simply incorrect. For instance, the Court of Criminal Appeals held that "(t)here was no corroboration by independent police investigation of the information supplied by the informant." Id. at 7. This conclusion totally ignores the fact that, after learning that Respondent McReynolds was out making drug deliveries, the police officers themselves immediately went out on the streets to attempt to corroborate their tip, which they most certainly did when they found Respondent engaged in a street corner conversation with an individual who, along with Respondent McReynolds, quickly vacated the area when they realized they were being observed by the police. The Court of Criminal Appeals also

held that the informant's tips here were lacking reliability because they did not provide a description of the place or places where Respondent McReynolds would be making deliveries or the time those deliveries would be made. This, too, is incorrect. The place was out on the street "riding around delivering drugs", and the time was "that morning". (R. 60; 63)

Finally, the Court of Criminal Appeals complained that the tips in question contained no self-verifying detail such as were present in Alabama v. White, supra. However, the fact that the police were able to locate Respondent McReynolds out on the street, engaged in a conversation with a pedestrian who quickly walked away in a furtive manner as soon as he saw he and Respondent McReynolds were being observed by the police, has to act, to some extent, as a self-verifying factor in the context of these particular tips and the totality of these particular circumstances.

In Alabama v. White this Court recognized a set of dynamics that were very similar to those

at play in Respondent McReynold's case. The Court stated:

> The Court's opinion in Gates gave credit to the proposition that because an informant is shown to be right about some things, he is probably right about other facts that he has alleged, including the claim that the object of the tip is engaged in criminal activity. 462 U.S., at 244, 76 L.Ed.2d 527, 103 S.Ct. 2317. Thus, it is not unreasonable to conclude in this case that the independent corroboration by the police of significant aspects of the informer's predictions imparted some degree of reliability to the other allegations made by the caller.

496 U.S. at 332, 110 S.Ct. at ____, 110 L.Ed.2d at 310.

CONCLUSION

The tips received here by Detective Goodman were provided to him not by an anonymous person, but by someone whom Detective Goodman knew, a person whom Detective Goodman had received tips from previously, and whose previous tips had all proven to be reliable. (R. 62) This information was then coupled with the fact that the tips at issue here also provided Detective Goodman with both "where" and

"when" Respondent McReynolds was to be engaged in an illegal activity -- i.e., out on the street "riding around delivering drugs" and "that morning". All of this must then be viewed in the context of Detective Goodman's effort to corroborate these tips by locating Respondent McReynolds and observing him engaged in a street corner conversation with another individual. Admittedly, it is entirely possible for a street corner conversation to be totally innocent, and to provide nothing in the way of corroboration of all of the above. However, the furtive movement of both the pedestrian and Respondent McReynolds in quickly walking and driving away, respectively, once they knew they were being observed by the police, is the factor which, when viewed in the totality of all the other circumstance, gave the police officers an articulatable reason to believe that Respondent McReynolds was engaged in an illegal activity, thus providing them with the reasonable suspicion they needed to be able to conduct the

investigatory stop which, ultimately, led to Respondent McReynolds' arrest.[2]

---

[2] In Sterling v. State, 421 So.2d 1375 (Ala.Cr.App. 1982), the Alabama Court of Criminal Appeals observed:

> The necessity of the stop and seizure must be viewed in light of the particular invasion which the (investigatory) stop and seizure involves. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). The governmental interest which allows official intrusion upon a private citizen's Fourth Amendment rights is that of effective law enforcement. The individual citizen is protected against unreasonable searches and seizures. However, in certain situations, not only is an invasive stop reasonable, but is merely a minor inconvenience and a petty indignity compared to the government's greater interest in crime prevention and detection. Terry v. Ohio, supra.

421 So.2d at 1378-79. And so it should have been in this case. This is not a case where an "end" is being sought to justify a "means". What we have here is a situation where the authorities were simply the beneficiaries of their own preparation and police work, as well as a little good fortune. Their preparation came in having developed a relationship with a confidential, reliable informant who knew what he/she was talking about when he/she said Appellant McReynolds was "out making deliveries". Their good work came from being fast-acting enough to be able to locate and observe Appellant engaged in an activity reasonably reflective of what the informant said he would be doing. And, finally,

(Footnote continued)

In conclusion, Your Petitioner, the State of Alabama, respectfully submits that in this case the Alabama Court of Criminal Appeals and the Alabama Supreme Court ruled contrary to the previous decisions of this Honorable Court.

(Footnote Continued)
they were simply fortunate enough (or Respondent McReynolds unfortunate enough) to, during the course of a routine investigatory stop, find a knife in the floor of Respondent's car in plain view, which reasonably led to a pat-down of Appellant's outer clothing for other weapons, which in turn led to the discovery of a pistol in Respondent's coat pocket, and then, ultimately, to bags of cocaine and marijuana which fell out of Respondent's pocket when the pistol was removed.

This time it was the police who could be considered to have been lucky; next time maybe it will be the suspect/motorist who, though carrying drugs and weapons, will be lucky enough to have them all safely tucked out of sight when he is stopped by the police under similar circumstances. In any event, however, the relative "luck" of the parties involved in no way changes the fact that, under the totality of these circumstances, the tips received by the police here, when combined with their independent efforts at corroboration, were shown to the trial court to be sufficiently reliable so as to support the officer's reasonable suspicion that Respondent McReynolds was, at the time of the investigative stop, engaged in an unlawful activity in their presence.

Therefore, your Petitioner prays that this Honorable Court will issue a writ of certiorari and will review the matters complained of herein and reverse the decisions of said appellate courts of Alabama.

Respectfully submitted,

JAMES H. EVANS
ATTORNEY GENERAL
BY:

_____
STEPHEN N. DODD
ASSISTANT ATTORNEY GENERAL

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APPENDIX A

STATE OF ALABAMA

IN THE CIRCUIT COURT FOR THE COUNTY OF DALLAS

FOURTH JUDICIAL CIRCUIT

CRIMINAL

STATE OF ALABAMA

V. Case No. CC-92-126

DANIEL MCREYNOLDS, Defendant.

REPORTER'S OFFICIAL TRANSCRIPT OF RECORD ON APPEAL

Before: Hon. J.C. Norton, Judge, and a jury

Selma, Alabama

July 30-31, 1992 -- Trial

MOTION TO SUPPRESS

MR. HENRY: Judge, may I ask if this motion is to suppress the search or the stop or what issue are we dealing with here?

THE COURT: Let me look and see. Is it in the court file?

MR. PETTAWAY: Yes, sir.

THE COURT: Let's look and see what it says. And if you don't have a copy, we'll

get a copy made for you. Do you not have a copy?

MR. HENRY: Judge, I have a motion to suppress the evidence, but I don't have a motion to contest the lawfulness of the stop.

THE COURT: All right. Let's go ahead with your motion. Go ahead; you can proceed.

JIMMY RAY MARTIN

duly sworn, testified as follows, to wit:

DIRECT EXAMINATION

BY MR. HENRY:

Q. Mr. Martin, state you name.

A. Jimmy Ray Martin.

Q. All right. December the 20th, 1991, are you on the job on that day?

A. Yes, I was.

Q. All right. Let's talk about 11:45, 11:50 in the morning. Who were you with at that time?

A. I was with Detective Roger Goodman.

Q. All right. And what were y'all doing at that time?

A. We had received information; we was out patrolling the area and seeing if we can find the person we was looking for.

Q. All right. What kind of information had you received?

A. I was informed that a person-- we had received two calls. The day before we received a call--

MR. PETTAWAY: I object to this information; it is hearsay at this point.

THE COURT: Well, I don't know what it is yet, so let's hear what it is. It may be; it may be something that is inadmissible. Let's see what we have.

Q. What information was it, Detective Martin?

A. I was informed by Detective Goodman that we had information that Rockjaw had received a package in the day before.

Q. Okay. Now, who is Rockjaw?

A. McReynolds.

Q. Daniel McReynolds?

A. Daniel McReynolds.

Q. Okay. All right. And what about the information that very day?

A. The very day we got information that he was riding around delivering drugs.

Q. Okay. Now, who did you receive this information from without-- who was this, without naming them?

A. It was a confidential reliable informant. I got the information through by Detective Goodman; we discussed it.

Q. Was it your informant or Detective Goodman's?

A. Detective Goodman's.

Q. Okay. all right.

THE COURT: Don't you reckon that's who we ought to be talking to now?

Everything about this thing he knows about and not you; is that right?

THE WITNESS: Yes, sir, on the informant.

THE COURT: Let's get the other witness in, if you don't mind. And I would sustain the objection to the hearsay.

DULY SWORN, TESTIFIED AS FOLLOWS, TO_WIT:

DIRECT EXAMINATION

BY MR. HENRY:

Q. Your name, please sir?

A. Roger Goodman.

Q. All right. You work with the Selma Police Department Drug Unit?

A. I do.

Q. December the 20th, 1991, were you on the job?

A. I was.

Q. About 11:45 or 11:50, who were you with?

A. Detective Martin.

Q. All right. And what were y'all doing at that time?

A. Riding the Small Street area, around the 800 block.

Q. All right. What -- Why were you in that area?

A. I received a tip on Daniel McReynolds.

Q. All right. When did you receive that tip?

A. Shortly before 11.

Q. All right. Shortly before-- that day?

A. Right.

Q. Had you received any information the day before?

A. I did.

Q. What information-- well, what was the source of your information?

A. What was the information?

Q. What was the source of your information?

A. An informant.

Q. All right. Had you ever dealt with that informant before?

A. I had.

Q. How often?

A. Several occasions. I don't remember exactly how often.

Q. All right. Had you received information from that informant before?

A. I had.

Q. Had you checked out that information before from that informant?

A. Yes.

Q. Had it turned out to be reliable?

A. Yes.

Q. Had it been reliable in every case?

A. Yes.

Q. All right. Now, what was the information received on the day before from this informant?

A. The day before was that he had received a package of crack cocaine.

Q. Who had received it?

A. Daniel McReynolds.

Q. All right. Did you take any action that day?

A. Not at that time.

Q. What information did you receive on December the 20th, 1991?

A. That morning the information was that he was out making deliveries.

Q. All right. And what time did you receive that tip?

A. That was between 11:30 and 12.

Q. All right. And was that the same source that you had received the information from the day before?

A. It was.

Q. All right. Was there any other information besides that on the tip?

A. No.

Q. Okay. And what did you do in response to that information?

A. That morning.

Q. Yes, on December the 20th, 1991.

A. Got out and rode the area and spotted McReynolds.

Q. Okay. What were you doing when you were riding?

A. Just patrolling; looking.

Q. Were you looking for him?

A. Yes, sir.

Q. Looking specifically for Daniel McReynolds?

A. Right.

Q. All right. And where did you find him?

A. At Small and Duke.

Q. And describe what you saw when you came upon him?

A. When we first saw him, he had pulled off on to Duke and was parked, talking to

another subject. They looked up and saw us; the subject turned--

MR. PETTAWAY: Objection. Their looking up and saw calls for mental operation of somebody else and an opinion.

THE COURT: Yes, sir. What he saw would not be something that this witness would know. He can say that he looked up and saw him looking at him or in his direction.

Q. Let me go back just a minute. Describe how the automobile was positioned there now?

A. It was turned south on Duke, just off of Small.

Q. All right. Was it all on Duke Street? Was all the car on Duke?

A. No, partly into Small.

Q. Okay. Was there any way to tell whether it was running, whether the engine was running?

A. I couldn't tell by looking.

Q. All right. Now, you've said there was another individual there at the car?

A. Right.

Q. Where was he or she?

A. Standing at the window.

Q. Which window?

A. The driver's window.

Q. Okay. And how far away were y'all when you first saw this car and this individual?

A. Coming up Small when we first saw him, we might have been half a block away; I'm not for sure.

Q. Okay. Now, what did the individual do when you approached? The individual outside the automobile.

A. Turned and walked away.

Q. All right. Did he look towards you?

A. Yes.

Q. Okay. And how soon after he looked towards you did he walk away?

A. Immediately.

Q. And tell the Judge how he walked away?

A. At a fast pace.

Q. All right. And in which direction did he walk away?

A. I believe he went south on Duke.

Q. And what did you observe about the automobile after that individual left it?

A. Then it backed out on to Small and started to take off.

Q. Okay. Now, and how did it do that? Describe the manner in which it did that.

A. Looked like it was in a hurry.

Q. Okay. And who was driving the automobile you were in?

A. McReynolds-- Oh, the car I was in? I was.

Q. What did you do at that point?

A. Turned the blue light on.

Q. All right. And what was the response of the automobile in front of you?

A. It stopped.

Q. Okay. Now, did you at that point recognize the individual in that automobile?

A. Yeah.

Q. When had you first recognized that individual?

A. When I first spotted the car.

Q. Okay. Did you recognize the car itself?

A. Yeah.

Q. Is it one that you had seen McReynolds in before?

A. Yeah.

Q. All right. After you turned on the blue light, what did this automobile do?

A. Stopped.

Q. Where did it stop in relation to where the intersection was?

A. Just a little ways past the intersection.

Q. And where did your car go?

A. Right behind his.

Q. And what did you do after the automobile stopped?

A. Got out, walked up to the driver's window.

Q. All right. What did Detective Martin do?

A. Walked to the other side.

Q. All right. Now, when you got to the driver's window, what did you do?

A. Asked for his driver's license.

Q. And what was his response?

A. He gave it to me.

Q. And did you observe anything in the automobile at that point?

A. Yeah, a bowie knife laying on the floorboard.

Q. All right. And what did you do when you observed that?

A. Asked him to step out of the car.

Q. And what was his response?

A. He did.

Q. And what did you do then?

A. Had him place his hands on the trunk of the vehicle.

Q. All right. Where was Detective Martin at this time?

A. On the other side.

Q. On the other side of?

A. He would have been in front of him, a little to the rear of the car.

Q. Okay. And what did you do at this point?

A. At that point I was attempting-- I was just fixing to pat him down when Martin hollered there's a gun or something like that.

Q. Okay. And what did you see then?

A. Then I saw Jimmy grab his hand and pull the gun out of his pocket.

Q. And how did Detective Martin do that?

A. Just jumped at him and grabbed it.Q. Okay. And where did the gun come from? Could you see where it came from?

A. Yeah, out of his right coat pocket.

Q. Did you see it come out?

A. Yeah--

Q. All right.

A. --I didn't see it come out; I saw it hit the trunk.

Q. Okay. And who got the gun?

A. Jimmy.

Q. What were you doing at that point?

A. We grabbed him then and started to try to cuff him.

Q. Okay. And were you successful in that?

A. After a little tussle, yeah.

Q. Okay. And had anything else come out of the pocket?

MR. PETTAWAY: Object to that unless he saw it.

Q. Did you see anything else come out of the pocket?

A. Saw it hit the trunk.

Q. Okay.

MR. PETTAWAY: Object; that is unresponsive.

THE COURT: Yes, sir, it is; I sustain it.

Q. At the conclusion of this struggle, was there anything on the trunk besides the gun?

A. Yeah.

Q. All right. Could you describe what it was?

A. Plastic bag with crack cocaine and a plastic bag with marijuana.

Q. Okay. Two bags?

A. Yeah.

Q. Okay. What did-- where was-- what did you do with Mr. McReynolds after you had cuffed him?

A. Called for a unit to transport him to headquarters.

Q. What did you do with him while they were coming?

A. Just stood there.

Q. Okay. What did you do with the bags that were on the trunk?

'A. I held onto those.

Q. You did yourself?

A. Yeah.

Q. And did you conduct a search of-- well, let me ask it this way. Had you searched Mr. McReynolds' person at the time that Mr. Martin began to grapple with him?

A. Not at that time.

Q. Okay. Had you patted him down or anything?

A. No.

Q. Okay. Had you searched his automobile?

A. No.

Q. Had Detective Martin searched his automobile?

A. No.

Q. Had Detective Martin patted him down?

A. No.

Q. Did you conduct a search subsequent to--well, did you place him under arrest?

A. Yeah.

Q. At what point?

A. When we put the cuffs on him.

Q. And did you conduct a search then?

A. Patted him down then.

Q. And did you find anything else on him?

A. A hook-bill knife in his right back pocket. That's about it.

Q. Okay. Did you search the automobile?

A. Not at that time.

Q. Okay.

MR. HENRY: Pass the witness.

CROSS EXAMINATION

BY MR. PETTAWAY:

Q. This individual that was at the car when you pulled up, can you recognize that individual if you saw him again?

A. No, I wouldn't know him.

Q. Now, what automobile were you riding in?

A. A white Ford.

Q. White Ford. The regular car you ride in?

A. I believe I was, yeah; I'm not sure.

Q. Who was driving?

A. I was.

Q. Well, you have ridden around in that car constantly in different areas and neighborhoods doing surveillance for drug activity, have you not?

A. Yeah.

Q. And so that car is well known in certain communities, isn't it?

A. Yeah.

Q. So it's not a secret when somebody would see that car of who is in there?

A. No.

Q. So now you are saying that you asked Mr. McReynolds to get out of the car, and you never did search him?

A. Not at that time.

Q. Did you ever grab him and take his right arm and put it behind his back?

A. Yeah.

Q. When did you do after?

After we found the gun and tried to cuff him.

Q. You didn't do that before you found the gun?

A. No.

Q. So you are saying you didn't do that before you found the gun?

A. that's what I'm saying, yeah.

Q. And you are saying you didn't search him at all?

A. Not before we arrested him, no.

Q. Right, right; not before the arrest?

A. No.

Q. Now, what type jacket did he have on; do you remember?

A. It was a leather coat, I believe.

Q. A leather coat?

A. I believe.

Q. And could you recognize it again if you saw it?

A. I'm not sure.

Q. You all didn't retain the coat as evidence?

A. No.

Q. So what was the purpose of having him step out of the vehicle?

A. To get him away from that bowie knife laying on the floorboard.

Q. And you didn't explain to him anything before Detective Martin grabbed him arm?

A. Not at that time,.

Q. And you didn't see any drug evidence anywhere when you had him to get out of the car, did you?

A. No, not at that point.

Q. And when you were stopped and approached the car, you didn't see any drug evidence at that time, did you?

A. No.

MR. PETTAWAY: That's all.

MR. HENRY: that's all I have.

THE COURT: Step down, sir; you are excused. Okay. Your motion is denied as to the search.

MR. PETTAWAY: Judge, we don't get a chance to put on some evidence?

THE COURT: Do you have a witness?

MR. PETTAWAY: Yeah, I have a witness I want to call.

THE COURT: Bring them on in.

MR. PETTAWAY: Mr. Fred Harrell.

FREDERICK HARRELL

duly sworn, testified as follows, to-wit:

DIRECT EXAMINATION

BY MR. PETTAWAY:

Q. What's you name?

A. Frederick Harrell.

Q. and where do you live?

A. 1309 Duke.

Q. and how long have you been living there?

A. Well, my parents own the house.

Q. How long have you been living there?

A. Well, all my life.

Q. And how old are you?

A. 32.

Q. Do you know Mr. Daniel McReynolds?

A. Yes, I do.

Q. And let me direct your attention to the 20th day of December of this year. Do you

recall being in the presence of Mr. McReynolds?

A. Yes.

Q. And where was he?

A. In a car.

Q. In a car?

A. Uh huh.

Q. And where were you standing?

A. On the right side of Duke. I was standing up-- I was trying to sell a Christmas tree. That's how the conversation started.

Q. Were you on the passenger's side or the driver's side?

A. when he pulled in, I was on the passenger's side.

Q. Are you sure you were not on the driver's side?

A. No, I didn't go to the driver's side because I had the tree sanding up on the sidewalk. And it kept tilting over, and I had to pick it up, because I was putting a sign on it.

Q. So you were on the passenger's side.

THE COURT: Please don't repeat the testimony.

MR. PETTAWAY: Okay.

Q. And what transpired about the conversation of selling a tree?

A. that's why I was out on the sidewalk. I had nailed some boards to the end of the tree, and I was trying to sell it. And when he pulled in, I asked him did he want to buy it.

Q. And after that, what happened?

A. After that, he was-- the conversation was over with. He was backing out, and the officers pulled up behind him.

Q. Did you see the officers come up before he backed out?

A. Well, when I turned around and was standing on the sidewalk, I saw them coming down Small Street.

Q. Did you recognize the officers' car?

A. Yes, sir.

Q. Did you walk away from the car or run away from the car?

A. No, I was still on the corner with the Christmas tree.

Q. And after that, after the officers stopped, tell us what you saw.

A. Well, they asked for his driver's license. Then they asked him to get out of the car.

Q. Let me ask you this: How far away were you from them?

A. I was still on the right side of Duke, and they were going up Small, going up the other way.

Q. About how far away?

A. I guess a whole street and then about two car lengths up.

Q. And were you able to hear and see what went on?

A. Well, some-- most of it.

Q. Now, were you able to see it?

A. What you mean see it?

THE COURT: Why don't you ask him to tell us what he saw?

Q. Okay; tell me what you saw.

A. Okay. I saw them when he asked him to get out of the car. And when he got out of the car, he raised his hands and put his hands on the hood-- on the trunk of the car. And I guess that's when the pistol was shown. And the guy that was on the passenger's side ran around, and they grabbed him and held him down and snatched the pistol out. And they kept-- had his hands behind him, and they kept running it up. And had him laying on the car, on the hood-- on the trunk of the car.

Q. Now, did you see any officers before he laid his hands on the car, did you see anybody search him or pat him down?

A. That is what he was attempting to do then.

Q. Well, there is a difference between an attempt and something actually happening.

THE COURT: Don't argue with your witness, please.

Q. Did you see any particular officer search him before he laid his hands on the car?

A. I saw Mr. Goodman search him.

Q. What did you see Mr. Goodman do?

A. He had him up against the car and was searching him; about the time he did that though, the other guy ran around. When he ran around the car, that's when they held him back and then they got the gun out and then they put him back over on the car.

Q. When did the officer grab his arm? Was it before the other officer ran around, or was it after the other officer ran around?

A. I'm thinking it was after, because he had his hands out and they were on the car.

Q. Okay. So it was afterwards?

A. Uh huh.

Q. Okay. Now, do you recall what type of a coat or jacket Mr. McReynolds had on?

A. I think it was a short leather jacket.

Q. Could you possibly recognize it again if you saw it?

A. Probably. I'm thinking it was black; just a short, you know, waist type jacket.

(Whereupon Defendant's Exhibit No. 1 was marked for identification by the reporter.)

THE COURT: We are trying the legality of the search; not the case in chief. Does that have something to do with the legality of the search?

MR. PETTAWAY: Yes, sir, I think it does.

THE COURT: What?

MR. PETTAWAY: Well, I want to show I guess the construction of the jacket and what-not to probably better aid the Court into what factual account--

THE COURT: I've got a good clear picture of what happened there.

MR. PETTAWAY: Well, I think if the Court sees the jacket, the Court can see that no pistol was in that pocket.

THE COURT: If I can see the jacket I can what?

MR. PETTAWAY: You could see that no pistol would fit in that jacket; the pocket is too small, and I think that goes to the heart of it.

THE COURT: What has that got to do with the legality of the search? This man just got through saying he saw the pistol.

MR. PETTAWAY: Right. Okay. What I'm saying is that it goes toward the credibility of the testimony of what was testified to during that point.

THE COURT: You want me to not believe this man when he says he saw it?

MR. PETTAWAY: No, no, I want you to believe him; but see he is giving you a slightly different version of what the officers said in some respect. And I think those small points are very critical.

THE COURT: Well, go ahead with your small points.

Q. For purposes of this hearing I'll show you what's been marked as Defendant's

Exhibit No. 1. do you recognize it? Take a look at it.

A. Well, like I said, I know it was a short jacket. I wouldn't remember if it was brown or black.

MR. HENRY: Judge, I'm going to object to any testimony concerning this jacket.

THE COURT: Did y'all bring the jacket in or did the Defendant bring it in? Who brought it in?

MR. HENRY: The defendant, Judge.

THE COURT: Okay; all right. Does it look like it might be the jacket you saw?

THE WITNESS: Yes, sir.

THE COURT: All right. Overrule your objection.

MR. PETTAWAY: No-- that's all I have.

MR. HENRY: I don't have any questions.

THE COURT: Step down, Mr. Witness; and go back there in the witness room, please, sir. And remember the instruction I gave you earlier. Is there going to be any other evidence?

MR. PETTAWAY: that's all the evidence, but I do want to make a brief argument. I think there is a case that kind of fits this situation.

THE COURT: Say what you have to say.

MR. PETTAWAY: Well, Your Honor, in this matter the police officer is saying that he was acting on a tip of what he testified to be a reliable informant. And this is what he said the information was that day: That Mr. McReynolds was out making deliveries. that was all the information. Nothing about where, what he was in; that kind of stuff.

Now, there is a case decided last year by the Alabama supreme Court, Carpenter v. State. It is reported at 592 So.2d 624. In this case, which is a very strange-- is a unique case wherein the Supreme Court, Justice Kennedy, authored an opinion which-- after-- he authored an opinion in August. On I think August 31st of 1991. But after rehearing in September, that opinion was withdrawn and a new opinion was substituted.

But the import of what both opinions were saying is still there. What those opinions would point out, in the original opinion Justice Kennedy reversed the Court of Criminal Appeals which had reversed the trial court. In that case the police officer acted upon information from a reliable informant. The officer said he had had evidence on prior occasions, all accurate, the informant was known to the officer and everything. The informant gave information that a particular person, Mr. Carpenter, would be traveling on South Mobile Street headed in such direction, in such automobile, and he had drugs.

And in the original opinion Justice Kennedy reversed it on the totality of circumstances because the trial court initially excluded the evidence. And the Court of Appeals reversed the trial court saying all the evidence should have come in, but then the Supreme Court originally reversed it saying that the evidence should

have stayed out because the information from that informant was not enough to form the basis of a stop. That there still had to be a little more, something else that the police can independently add to it.

Now, on rehearing it was pointed out that well there was a little extra information which went to that. So on rehearing the court said okay we will reverse it and say that the evidence should have come in. But the import of that decision was that on an informant's tip alone, no matter how reliable, there still has to be some small measure, just some little small measure of corroboration--of independent corroboration now, to form the basis of a simple stop. We are not talking about probable cause now. The court firmly held that as far as a search went or what-not, there was clearly not enough evidence to support a search. But the issue in that case was the stop. And I think we have the same situation here which is even less than Carpenter. All the

informant said was that he was out making deliveries. Didn't say what he was in or where he was going or where he was.

Now, they said the day before the informant said okay McReynolds has got a shipment in. That's all. Then the next day he's out making deliveries. That's all. that's all we have, Judge. Nothing else about where he is, which was he is going, what he is doing, exactly what he's got. And I think if His Honor really took a good look at that Carpenter case, the reasoning is the same. There was just a little different evidence which the court substituted its opinion for. But I think that case is very important because the reasoning is still there. There is nothing here but just he is out making deliveries. He got a shipment in the day before; now he is out making deliveries. Nothing about where he is, where he is going, where he is headed or anything. And I think, Your

Honor, there was not reason enough to make a stop.

THE COURT: : Okay. Your motion is overruled. Ask the jury to come in, Jack, please.

(R. 58-83)

APPENDIX B

THE STATE OF ALABAMA- - -JUDICIAL DEPARTMENT

THE ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 1992-93

CR 92-725

Daniel McReynolds

v

State

Appeal from Dallas Circuit Court

C-92-126

BOWEN, PRESIDING JUDGE

Daniel McReynolds, the appellant, was convicted of the unlawful possession of cocaine and of possession of marijuana in the first degree. He was sentenced to 15 years imprisonment as a habitual felony offender. On this direct appeal from those convictions, he contends that the information provided by a confidential informant was insufficient to provide the police with the reasonable suspicion necessary to justify the stop of the appellant's automobile. We agree.

At the suppression hearing, Selma Police Officer Roger Goodman testified that on December 19, 1991, he received information from an informant that the appellant had received a package of crack cocaine. On December 20, the informant told Goodman that the appellant "was out making deliveries." R. 63

Goodman testified that he had received information from this informant on "[s]everal occasions" in the past. R. 62. Although he did not remember "exactly how often" he had received information from this informant, Goodman testified that that information had been "reliable in every case." R. 62.

Acting upon the information received December 20, Goodman "rode the area and spotted" the appellant. R. 63. He stated that he observed the appellant sitting inside his parked automobile "talking to another subject," R. 64, who was "[s]tanding at the window," R. 65. When

the "other subject" saw the police, he "[t]urned and walked away ... [i]mmediately ... [a]t a fast pace." R. 65. Goodman testified that the appellant's automobile "backed out on to Small [Street] and started to take off," and it "[l]ooked like it was in a hurry." R. 65, 66.

Goodman testified that he then turned on the blue lights of his car and stopped the appellant. He requested the appellant's driver's license and he observed a bowie knife on the floorboard of the appellant's car. Goodman asked the appellant to step out of the car "[t]o get him away from that bowie knife," and "[h]ad him place his hands on the trunk of the vehicle." R. 72, 67. Detective Jimmy Martin then grabbed the appellant's hand and took a gun out of the appellant's right coat pocket. "After a little tussle," the appellant was handcuffed. R. 68. A plastic bag containing crack cocaine and a

plastic bag containing marijuana were found on the appellant.

The circuit court overruled the appellant's motion to suppress without comment or explanation.

Under the facts of this case, the stop of the appellant's automobile was justified only if the police had a reasonable suspicion that the appellant was engaged in the unlawful possession or sale of drugs. See Ex parte Barnette, [Ms. 1920421, April 23, 1993] ___ So.2d ___ (Ala. 1993); Ex parte Carpenter, 592 So.2d 627, 629 (Ala. 1991); Ex parte Betterton, 527 So.2d 747, 749 (Ala. 1988); Ex parte Yeung, 489 So.2d 1106, 1109 (Ala. 1986).

"To determine whether reasonable suspicion existed for a particular stop, the totality of the circumstances, as known to the officer at the inception of the stop, must be considered." Arnold v. State, 601 So.2d 145, 149 (Ala.Cr.App. 1992) (emphasis added). See also Lamar v.

State, 578 So.2d 1382, 1385-86 (Ala.Cr.App.), cert. denied, 596 So.2d 659 (1991). In this case, the only facts stated by the officer as known to him at the time he stopped the appellant's car were that an informant known by the officer to have provided correct information on "several occasions" in the past had told the officer that the defendant had received a package of cocaine on one day and that he was out making deliveries the next.

The Alabama Supreme Court recently addressed the issue of reasonable suspicion based on an informant's tip:

> "The first question that this Court must answer is whether there was a 'reasonable suspicion,' based on the informant's tip, to justify stopping [the defendant's] car.
>
> "The United States Supreme Court in Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), held that 'a police officer may, in appropriate

circumstances and in an appropriate manner approach a person for purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest.' 392 U.S. at 22, 88 S.Ct. at 1880. The standard for allowing a Terry stop is whether there is a reasonable suspicion that 'the person being stopped has engaged in some type of criminal activity.' Webb v. State, 500 So.2d 1280, 1281 (Ala.Crim.App.App.), cert. denied, 500 So.2d 1282 (Ala. 1986).

"In Adams v. Williams, 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed.2d 612 91972), the Supreme Court addressed the question of whether an informant's tip created a reasonable suspicion to justify a Terry stop. In that case, an informant known to the police officer told him that an individual in a nearby automobile was carrying drugs and had a gun at his waist. The officer

approached the car and asked the defendant to open his door. The defendant rolled down the window, and the officer reached inside and found a gun at the defendant's waist. The defendant was arrested and searched pursuant to the arrest. Drugs were found on the defendant and in the car. The Supreme Court noted that the informant's unverified tip may have been insufficient for a narcotics arrest or for a search warrant under Aguilar v. Texas, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964), and Spinelli v. United States, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637 91969), but held further that the tip from an informant known to the police officer 'carried enough indicia of reliability to justify the officer's forcible stop of [the defendant].' Adams v. Williams, 407 U.S. at 147, 92 S.Ct. at 1924.

"In Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), the Supreme Court abandoned the rigid two-pronged test of Aguilar and Spinelli, in favor of a 'totality of the circumstances' approach in determining whether an informant's tip creates probable cause. Under Aguilar and Spinelli, the prosecution had to prove the informant's 'basis of knowledge.' Under the totality-of-the-circumstances approach, the informant's 'veracity' and 'reliability' and his 'basis of knowledge' are all relevant factors in determining the overall reliability of a tip, by a strong showing as to the other [factors], or by some other indicia of reliability.' Illinois v. Gates, 462 U.S. at 233, 103 S.Ct. at 2329.

"'The Fourth Amendment requires "some minimal level of objective justification" for making the

[Terry] stop. INS v. Delgado, 466 U.S. 210, 217, 104 S.Ct. 1758, 1763, 80 L.Ed.2d 247 (1984). That level of suspicion is considerably less than proof of wrongdoing by a preponderance of the evidence. We have held that probable cause means "a fair probability that contraband or evidence of a crime will be found," Illinois v. Gates, 462 U.S. 213, 238, 103 S.Ct. 2317, 2332, 76 L.Ed.2d 527 (1983), and the level of suspicion required for a Terry stop is obviously less demanding than that for probable cause. See United States v. Montoya de Hernandez, 473 U.S. 531, 541, 544, 105 S.Ct. 3304, 3312, 87 L.Ed.2d 381 (1985).'

"United States v. Sokolow, 490 U.S. 1, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989). "Most recently, the Supreme Court has held that an anonymous telephone tip,

> corroborated by independent police work, exhibited sufficient indicia of reliability to provide reasonable suspicion to make a Terry stop. Alabama v. White, 496 U.S. 325, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990). ...
>
> "The Supreme Court held that the 'veracity,' 'reliability,' and 'basis of knowledge' factors for determining whether an informant's tip creates probable cause are also 'relevant in the reasonable suspicion context, although allowance must be made in applying them for the lesser showing required to meet that standard.' Alabama v. White, 496 U.S. at ___, 110 S.Ct. at 2415."

Ex parte Carpenter, 592 So.2d 627, 629-30 (Ala. 1991) (emphasis in original).

"In this case, the information from the confidential informant did not "carr{y} enough indicia of reliability to justify the officer's forcible stop" of the appellant.

Adams v. Williams, 4076 U.S. 143, 147, 92 S.Ct. 1921, 1924, 32 L.Ed.2d 612 (1972) Here, the deficiency in one factor was not compensated for by a strong showing of the informant's veracity or by some other indicia of reliability. The prosecution only minimally established the informant's credibility. 1 W. LaFave, Search and Seizure §3.3(a)(2d ed. 1987) There was no showing that the information was reliable and there was nothing to show how the informant obtained his information. There simply was no other indicia of reliability.

There was no corroboration by independent police investigation of the information supplied by the informant. The "tip" was extremely general and was almost impossible to corroborate unless the police actually observed the appellant selling drugs, which they did not. The informant did not provide a description of the appellant's automobile, the place or place where he would be 'making deliveries,' the time those deliveries would

be made, or the people to whom those deliveries would be made. The tip contained no self-verifying detail and was not a statement against the penal interests of the informant.

In this case, there is no indication of the basis of the informant's knowledge; there is no indication of how the informant obtained that knowledge. The prosecution established the informant's 'reliability' or 'veracity' only to a very limited degree. We have little more than a cursory assertion that the informant was reliable. We have no indication of what type of information the informant had previously provided the officer. Indeed, it may have been no more than that provided here.

The facts in Carpenter are much stronger and plentiful than those presented here:

> "In the instant case, the informant was known to Officer Griffis, who stated that the informant's tips had led to at least 20 arrests and

convictions. The officer testified that a tip from this informant was 'like money in the bank.' The informant had told him that [the defendant] would be traveling down South Mobile Avenue, in his own car, and that he would be armed and would have drugs in the car. The officer already knew [the defendant] and knew the type of car he drove. The officer saw [the defendant's] car leave a residential driveway and enter South Mobile Avenue. The officer followed [the defendant] for a brief period and then stopped him.

"In Alabama v. White, supra, the Supreme Court held that certain information received through a tip, which information was verified to nearly the same degree as the information in this case, created a reasonable suspicion to warrant a Terry stop, even though that tip came from an

> anonymous telephone source. A known informant's tip 'is a stronger case than obtains in the case of an anonymous telephone tip.' Adams v. Williams, 407 U.S. at 146, 92 S.Ct. at 1923. We hold that the facts of this case, given the informant's reliability, created a reasonable suspicion to warrant stopping [the defendant's] car based on the known informant's tip."

Carpenter, 592 So.2d at 630-31.

However, in Carpenter, the Alabama Supreme Court stated: "At the outset, we note that the facts of this case present a very close case." 592 So.2d at 628. We do not interpret Adams or Carpenter to mean that any tip from an informant known to the police officer carries enough indicia of reliability to justify the officer's forcible stop of the defendant merely because the officer indicates that the informant has provided correct information

in the past. See 3 W. LaFave, Search and Seizure §9.3(e) (2d ed. 1987).

The motion to suppress should have been granted. The judgment of the circuit court is reversed and this cause is remanded for further proceedings not inconsistent with this opinion.

REVERSED AND REMANDED.

All Judges concur.

APPENDIX C

IN THE SUPREME COURT OF ALABAMA

December 30, 1993

1930095

Ex parte State of Alabama. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS (In re: Daniel McReynolds v. State) (92-725)

(Dallas: CC-92-126)

CERTIFICATE OF JUDGMENT

Writ Denied

The above cause having been duly submitted, IT SI CONSIDERED AND ORDERED that the petition for writ of certiorari is denied.

HOUSTON, J. - HORNSBY, CJ., ALMON, KENNEDY AND COOK, JJ., CONCUR.

I, Robert G. Esdale, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the

instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 30th day of Dec., 1993

/s/

Clerk, Supreme Court of Alabama

APPENDIX D

§13A-12-212. Unlawful possession or receipt of controlled substances.

(a) A person commits the crime of unlawful possession of controlled substance if:

(1) Except as otherwise authorized, he possesses a controlled substance enumerated in schedules I through V.

§13A-12-213. Unlawful possession of marihuana in the first degree.

(a) A person commits the crime of unlawful possession of marihuana in the first degree, if, except as otherwise authorized:

(1) He possesses marihuana for other than personal use; or

(2) He possesses marihuana for his personal use only after having been previously convicted of unlawful possession of marihuana in the second degree or unlawful possession of marihuana for his personal use only.